

NOT FOR PUBLICATION

[27]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	:	
	:	Case No. 04-CR-622 (FLW)
Plaintiff,	:	
	:	
v.	:	OPINION
	:	
	:	
LINDA M. LOVE,	:	
	:	
Defendant.	:	

APPEARANCES

For Plaintiff:

BRIAN HOWE
OFFICE OF THE UNITED STATES ATTORNEY
970 BROAD STREET
NEWARK, NJ 07102

For Defendant:

LINDA M. LOVE, PRO SE
25901-050
FCI DANBURY
FEDERAL CORRECTIONAL INSTITUTION
ROUTE 37
DANBURY, CT 06811

WOLFSON, United States District Judge

Defendant Linda M. Love, (“Love” or “Defendant”), pro se, filed a motion for an extension to file an appeal pursuant to Fed.R.App.P. 4(a)(5). The United States argues that the Federal Rules of Appellate Procedure expressly bar the extension that Defendant seeks. The Court has considered the parties’ papers pursuant to Fed.R.Civ.P. 78, and for the reasons stated

below, Defendant's motion is denied.

I. BACKGROUND

On July 6, 2004, Defendant entered a plea of guilty to a one-count information charging her with conspiring to produce identification documents without legal authority, contrary to 18 U.S.C. § 1028(a)(1) and (b)(1), and in violation of 18 U.S.C. § 1028(f). Pursuant to the plea agreement, Defendant waived her right to appeal and collaterally attack her sentence. Plea Agreement with Linda M. Love, (July 6, 2004) at 6-7. This Court sentenced Defendant on April 6, 2005, and the Judgment of Conviction was entered on April 7, 2005. On June 7, 2005, Defendant filed the instant motion for an extension to file an appeal.

II. DISCUSSION

In a criminal case¹, a defendant's notice of appeal must be filed within 10 days after the later of the entry of judgment or the filing of the government's notice of appeal. Fed.R.App.P. 4(b)(1)(A). Under Fed.R.App.P. 26(a)(2), Saturdays, Sundays and legal holidays are excluded from the computation of time. Therefore, the 10-day period in which Defendant had to file an appeal expired on April 21, 2005, the date on which Defendant's judgment became final. See Fed.R.App.P. 26(a)(2)-(3).

According to Fed.R.App.P. 4(b)(4), "Upon a finding of excusable neglect or good cause, the district court may--before or after the time has expired, with or without motion and notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)." Here, this thirty day grace period expired on May 21, 2005. However, Defendant filed the instant motion for an extension to file an appeal on

¹In her moving papers, Defendant cites to Fed.R.App.P. 4(a). That rule, however, applies to appeals in civil cases, and is not applicable to this case. Fed.R.App.P. 4(b) applies to appeals in criminal cases and is therefore applicable here.

June 7, 2005. Therefore, Defendant's motion is untimely and is denied.

III. CONCLUSION

For the foregoing reasons, Petitioner's motion for an extension to file an appeal is hereby denied. The Court will issue an appropriate order.

Date: July 11, 2005

S/ Freda L. Wolfson
Honorable Freda L. Wolfson
United States District Judge